

People v. Hanzlik -- revised affirmation

Jonas Gelb <gelblaw@gmail.com>

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To: "Sandusky, Robert" <SANDUSKR@bronxda.nyc.gov>

Mr. Sandusky:

I have read your amended affirmation. I do not understand the argument of your chief, in that certain non-factual statements contained therein are not properly included in an affirmation under 2106 of the CPLR, while other non-factual statements are allowed to remain. I believe that the affirmation should stand as signed by me on October 9th.

I specifically take issue with the amended item 15. Your change implies that the DD5 was recovered from my files. It was not and could not have been. This assertion of mine is the single reason we drafted this affirmation.

If any change is made, it should be to add that "if we (the defense attorneys Richman, Hill and myself) had had the DD5 in question, there would have been no need to mark Defendant's exhibit G for ID and ask Detective Tracy about its authorship. Possession of this DD5 would have told us its authorship and date, as well as the participants at the interview." This is argument, I realize. But, it is based upon the record and upon logic and goes to show why we did not have it at trial and that, nonetheless, we effectively represented the defendants.

It seems to me that this affirmation should be submitted to the Court for it alone to decide if it contains properly stated facts and if it should be considered. It may well test the boundaries of correct procedural content, but that is not for your office to decide. It is my affirmation, in my name and with my assertions.

This affirmation was prepared because I took issue with your reply to the 440 motion. In order to clarify that with which I took issue I ask you now to submit it, as written, along with the addition as I requested herein.

I am not a party to this 440 motion, so I have no standing to act on my own. You offered to submit my affirmation, that is why it was prepared. Editing it should not be a requirement for it to pass muster. I believe that the Court should have all the facts in order to make its decision and that my affirmation aids to toward that end.

In any event, I must thank you for telling me of the motion and thus allowing me to review the transcript and my file, and to thus re-discover "Def's G for ID", therein. It was the professional thing to do, whatever your decision on submission of my affirmation. You have been a gentleman and a pleasure to work with.

Jonas Gelb

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